

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(h),) MB Docket No. 03-181
Table of Allotments,) RM-10758
FM Broadcast Stations.)
(Weatherford and Blanchard, Oklahoma))

NOTICE OF PROPOSED RULE MAKING

Adopted: July 30, 2003

Released: August 1, 2003

Comment Date: September 22, 2003

Reply Date: October 7, 2003

By the Assistant Chief, Audio Division

1 The Audio Division has before it a Petition for Rule Making filed by Wright Broadcasting Systems, Inc. ("Petitioner"), licensee of FM Station KWEY, Channel 247C1, Weatherford, Oklahoma. Pursuant to Sections 1.420(g) and (i) of the Commission's Rules, Petitioner proposes to change the community of license for KWEY-FM from Weatherford to Blanchard, Oklahoma, and to change the corresponding channel allotment from Channel 247C1 to Channel 247A. Petitioner represents that if its request is granted, it will file an application to modify the facilities of KWEY-FM to specify operation on Channel 247A and to change its community of license to Blanchard, Oklahoma.

2 Petitioner proposes to change the community of license for Station KWEY-FM from Weatherford to Blanchard under the guidelines set forth in *Modification of FM and TV Authorizations to Specify a New Community of License*.¹ That decision establishes that, in evaluating a change of community proposal, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.²

3 In its Petition for Rule Making, Petitioner states that the proposed use of Channel 247A at Blanchard is mutually exclusive with the current use of Channel 247C1 at Weatherford. Petitioner notes that Weatherford, the current community of license for KWEY-FM, would not be deprived of its only local service because it is currently served by Station KWEY(AM), which would remain licensed to Weatherford.³ In addition, Channel 286A, which is currently vacant, is also allotted at Weatherford. Finally, Petitioner states that allotment of Channel 247A at Blanchard would afford that community a first local service (FM allotment priority 3) and would result in a significant net gain in population service coverage.

¹ 4 FCC Rcd 4870 (1989), *recon granted in part*, 5 FCC Rcd 7094 (1990).

² 90 FCC2d 88, 91-92 (1982). The FM allotment priorities are the following: (1) First full-time aural service, (2) Second full-time aural service, (3) First local service, and (4) Other public interest matters. Equal weight is given to priorities (2) and (3).

³ Petitioner is also the licensee of KWEY(AM).

4. Blanchard, Oklahoma is an incorporated city with a population of 2,816, according to the 2000 U.S. Census Data. Petitioner states that Blanchard has an elected mayor and city council which are independent of the governments of McClain and Grady Counties, where Blanchard is located. The city has its own U.S. Post Office, volunteer fire department, police department, water plant, trash disposal, sewer system, and library. Blanchard has a variety of retail stores, professional services, restaurants, service stations, and banks, and the community is served by fifteen houses of worship and several service and community organizations. Blanchard also is served by a weekly newspaper, the *Blanchard News*, which is published in Blanchard.

5. Commission staff analysis shows that the proposed change of community would result in a gain in service for 171,528 persons in and around Blanchard and a loss in service for 92,981 persons in and around Weatherford, for a net gain of 78,547 persons. The proposal also would produce a loss in service to 16,422 square kilometers and a gain in service to 2,516 square kilometers, for a net loss in service to 13,906 square kilometers. All of the loss area would continue to be well-served except for a few small sections of the loss area of Channel 247C1 at Weatherford that would be left with only four full-time reception services. This area contains 1,296 persons and covers 548 square kilometers. The remainder of the loss area would continue to be served by at least five full-time services. The gain area of Channel 247A at Blanchard is already completely covered by at least five full-time reception services.

6. Neither the existing 70 dBu signal for KWEY-FM, operating on Channel 247C1 at Weatherford, nor the proposed 70 dBu signal for a Channel 247A facility at Blanchard, covers any part of any urbanized area. Under the circumstances described in the petition, no *Tuck* analysis will be necessary to evaluate this change of community proposal.⁴

7. The proposal to allot Channel 247A at Blanchard warrants consideration because it would provide a first local broadcast transmission service to Blanchard, thus constituting a preferential arrangement of allotments when compared with the current allotment of Channel 247C1 at Weatherford.⁵ The provision of a first local service to Blanchard (allotment priority 3), coupled with a significant increase in the number of persons served, more than outweighs the loss of a fifth transmission service to a comparatively small number of persons in the loss area at Weatherford.⁶

8. The proposed allotment could be made with the site restrictions and reference coordinates indicated below. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Blanchard and Weatherford, Oklahoma.

⁴ See *Iave and Richard Tuck*, 3 FCC Rcd 5374 (1988), and *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10,352 (1995).

⁵ Retention of Channel 247C1 at Weatherford does not satisfy any of the first three allotment priorities.

⁶ See discussion in ¶ 5, *supra*. The number of persons who would lose a fifth aural transmission service, 1,296, is approximately 1.6 percent of the increase in the total number of persons served if the proposal is implemented.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Blanchard, Oklahoma	---	247A
Weatherford, Oklahoma	247C1, 286A	286A

Proposed Coordinates for Channel 247A at Blanchard, Oklahoma: 35-07-21 NL and 97-40-18 WL, at a site 2.1 km (1.3 miles) southwest of Blanchard

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

10. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before September 22, 2003, and reply comments on or before October 7, 2003, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on counsel for the petitioner, as follows:

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100 Carpenter Drive, Suite 100
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11. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. An envelope must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed. Reg. 11549 (February 9, 1981).

13 For further information concerning this proceeding, contact Deborah A. Dupont Media Bureau, at (202)418-7072. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

APPENDIX

1 Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM (TV) Table of Allotments, Section 73.202(b) (73.606(b)) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached

2 Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. The proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request

3 Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved

4 Comments and Reply Comments, Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5 Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C